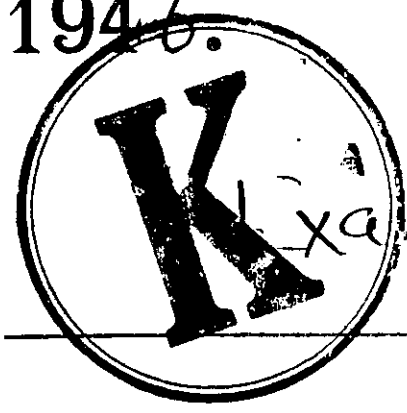
1946.

File No. S. Bel. 2/46



DEPARTMENT

BRANCH Pune 194

Subject:— Suit: Belgaum.

C.S no. 446 of 1945.

Bhimappa Hanmappa Doramannavar .... Plaintiff

Vs.

The Province of Bombay and others .... Defts.

Re: For a declaration that the plaintiff is the validly adopted Son of the deceased Hanmappa Ramappa of Mannikeri and as such eligible to serve as a Sanadi in place of the deceased Hanmappa and for possession of the suit properties belonging to the latter.

First Appeal No. 165 of 1947

File No. S. Bel. 2/46

Std. Sectt. Slip 24-B

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		Suits Belgaum. C.S. No. 446 of 1945. B. H. Doramannavar pltf. v/s The Province of Bombay and others	
1	Printed G.R.L.D. 3841 22nd May 1946.	The pltf. is the validly and legally adopted son of the deceased H.R. Doramannvar. and for possession of the suit properties belonging to the latter Sanctioning the defence of the suit.	27
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O.S. No. 446/1945. 7 1

In the court of the Civil Judge, Senior Division, Belgaum.

1. Bhimappa Hanamappa Doramannavar, Berad Agriculturist age 30 inhabitant of Mannikeri, Taluka Gokak. Plff.

Vs.

1. The Province~~x~~ of Bombay (the summons to be served on the Collector of Belgaum).
2. Somappa Venkappa Dodramannavar now styling himself as the adopted son of Hanamappa Dodramannavar, Berad, Agriculturists, aged 30 inhabitant of Mannikeri, Taluka Gokak. Defts.
3. Yallawa w/o Hanamanappa Dudramannavar aged 25 caste, occupation and residence -do-

Claim Rs.
for Court Fee.
for Jurisdiction.

Herein the plaintiff above named begs to submit as under:--

1. The subject matter of the suit consists of lands desribed below:--

S.No.	Area.	Assessment	Price.
46	35-33	6-0-0	1800.
64	10-23	3-0-0	700.
65	2-25	2-0-0	400.
133	11-36	7-0-0	1800.
195	13-11	3-0-0	1000.
			5700.

2. The lands described above are Shet-sanadi lands which belonged to Hanamappa Ramappa Dodramannavar who enjoyed them as owner till his death which took place on 18-12-1941. He was serving as Sanadi

of -- 2 ---

of Mannikeri during his life.

3. In addition to the property described above the deceased Hanamappa left some Raitwa lands and one house. The Plaintiff is in actual possession of the said house and has alienated the Raitawa lands.

4. Hanamappa died leaving behind him surviving two widows - Lakkawa and Def.No.3, Lakkawa is the senior xk widow and Deft. No.3 is the junior xxxixx widow of deceased Hanamappa.

5. Plaintiff is the younger brother of Lakkawa the senior widow of Hanamappa. Hanamappa had no male issues, nor had he adopted any one during his life time.

6. After the death of Hanamappa his senior widow Lakkawa adopted plaintiff as a son to Hanamappa with due ceremonies at Mannikeri on 23-1-1942 and executed a deed of adoption in the name of the plff. on 30-1-1942 and got it registered also. Thus by the said adoption plaintiff became clothed with all the rights of a natural born son of Hanamappa and began to enjoy all his property as his son including the suit lands.

7. This being the real and normal state of things, Deft. No.2 styling himself as the adopted son of deceased Hanamappa or in the alternative as the nearest agnate applied to the Mamlatdar of Gokak to appoint him as the sanadi in the place of deceased Hanamappa and to assign the suit lands to him. After an enquiry regarding this application, the Prant Officer, N.D. appointed on 12-3-42 Plff. as the Sanadi in place of Hanamappa. On an appeal preferred by Deft. No. 2 against the order of the Prant N.D. to the Collector, the xlatter upheld the order of the Prant Officer and dismissed the appeal of Deft. No.2 on 19-6-42. In appeal preferred by Def. No 2 to the Commissioner, S.D. against the orders of the Prant Officer, N.D. and the Collector, the former reversed the orders of both the Lower courts and appointed Deft. No. 2 as Sanadi holding him to be the adopted son of deceased Hanamappa and ordering the delivery of - - possession of the suit lands to him on 5-7-43 Plaintiff preferred an appeal to the Government of Bombay Revenue Department which was rejected on 14-3-1944.

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8. Defendent No. 2 is not the adopted son of deceased - - Hanamappa ~~xxdxmmv~~ Hanamappa had not adopted him during his life time. The alleged adoption set up by Deft. No. 2 is entirely false and has no baring in truth. Backed by the order of the Commissioner S.D. dated 5-7-43 Deft. No. 2 has taken possession of the suit - - lands and has been enjoying them unauthorizedly. Defendant No. 2 has no title ~~xxx~~ to the suit lands.This possession of the suit - - lands is that of a trespasser. The order on which Deft. No. 2 relies for justifying his possession is not only illegal but ultra vires. The Commissioner,S.D. has arrogated to himself the duties and functions of a civil court by sitting in judgment, over the questions of title of the rival claimants. The Commissioner's order that Deft. No.2 is the adopted son of deceased Hanamappa is void ab initio as he was incompetent to give finding on the adoption of plff. or the alleged adoption of Deft.2.So the otder of the Commi- -ssioner, is illegal, untravires and without jurisdiction. Therefore plff. had to file the present suit against the defts. that plff. is the legally and validly adopted son of deceased Hanamappa and - - entitled to serve as Sanadi in place of deceased Hanamappa and for possession of the suit lands from Defendant No. 2.

9. The cause of action for the suit arose in the month of July 1943 both for declaration and possession.

10. This court has jurisdiction to try this suit as it is within its spacial jurisdiction.

11. The claim for court fee is valued as follows:--

1. 2 Declarations. 37-8-0
2. For possession of suit— Property assessment Rs. 21 x 7½ = 157-8-0
3. Suit lands difference between Ass.& guzri (Nafa 21-8-0 x 15 times) Rs. 320-8-0

total Rs. 480

total Rs. 880-0-0

(F.F.O.)

12. Notice as required by law has been given to Deft. 1.
13. Deft. No. 2 is in actual possession of the suit lands, Deft No. 3 is the junior widow of deceased Hanamappa.
14. Plff. prays :-- That setting aside all the contentions of Defts. a decree may be passed.

(a) Declaring Plff. as the legally and validly adopted son of deceased Hanamappa and the properties of said Hanamappa be given in possession of Plaintiff from deft.

(b) Declaring plff. as the person eligible to serve as Sanadi in place of deceased Hanamappa.

(c) The costs of this suit may be awarded.
(d) Future mesne profits may be awarded.
(e) If necessary, it may be permitted to amend the plaint.
(f) The other relief which the court thinks fit may be awarded.

I Bhimappa Hanamappa Dodramannavar of Nipani Taluka Gokak state on solemn affirmation that the above written facts as being translated to me are true to the best of my knowledge and belief.

A/19-2

(.O..

Belgaum Suit No. 446 of 1945.

In this suit the plaintiff claims to be the validly adopted son of one Hanmappa, a Shet Sanadi, against the defendant No.2. In this dispute Government is not interested and need not join issues with either party so far as adoption is concerned. The plaintiff has however claimed that as the validly adopted son of the deceased Hanmappa he is entitled to the office of the sanadi and to the possession of Sanadi lands. In this respect the view of Government is that the office of the Sanadi and the lands appurtenant to that office are not hereditery and are not Watan property. This view is contrary to the High Court's view in Limbaji v. Rama 1898 P.J. 127 and Vishnu V. Shanker 35 Bom. L.R. 114. Government has however never accepted this view: see Phadnis Watan Act Appendix II p. 240. The view of Government and the evidence on which it is based have been placed before the Court in Dharwar Civil Suit No. 63 of 1940* which is a test case and is now pending in second appeal in the High Court. In this suit it is not necessary to tender the mass of evidence. Probably the Court will follow the High Court's rulings unless in the meantime the High Court accepts the view of Government. All that is necessary to plead in this suit is that assuming that the plaintiff's adoption is valid, he is not entitled to the declaration and possession regarding the office of the Sanadi and the land pertaining to that office. That plea has been taken in the brief. In addition, the suit is also barred under section 4 of the Revenue Jurisdiction Act and Article 14 of the Limitation Act.

* File put up

L. D. 21 MAY 1946 A

R.D. No 37/46 dt. 18.5.46.

Sanction may be accorded to the defence of the suit on the lines of the appended brief and written statement.

A ALR RE 7/5
RC A 12/5/46
* See R.D. 20.5.46

7/5/46

7 25 19

In the Court of the Civil Judge,
Senior Division, Belgaum.

Bhimappa Hanamappa Doramannavar. ... Plaintiff;

Vs.

The Province of Bombay and others. ... Defendants.

Written Statement on behalf of Government (defendant No. 1) is as follows :-

1. This defendant is not interested in the question whether the plaintiff or the defendant No. 2 is the validly adopted son of the deceased Hanamappa. On this question, this defendant is prepared to abide by the Court's decision.

2. The plaintiff's claim to be eligible for Sanadi service and to restoration of possession of Sanadi lands is a claim against the Crown relating to lands held on service. The Court has therefore no jurisdiction to entertain this suit under the fourth paragraph of section 4(a) of the Bombay Revenue Jurisdiction Act.

3. The Suit against Government is time barred under Article 14 of Schedule I of the Indian Limitation Act.

4. Assuming without admitting that the plaintiff is the validly adopted son of the deceased Hanamappa, this defendant submits that he is not entitled to a declaration that he is eligible for Sanadi service nor to possession of lands held for Sanadi service. The defendant submits that lands held for the performance of the Shet Sanadi service ~~and that sanadi~~ and the office of the Shet Sanadi are not hereditary and are not watan property. The lands are held for the performance of the Shet Sanadi service ~~as that sanadi~~ and if the Sanadi ~~in possession thereof~~ ceases to perform or is considered unfit or incapable of performing service, Government can appoint a new Sanadi in his place, resume the service lands and grant them to the new officiator for his remuneration

5. The Commissioner's order is therefore legal and intra vires. It is hence submitted that the suit fails

and must be dismissed with costs.

District Government Pleader.

I District Government Pleader, Belgaum, do hereby declare that what is stated in paragraphs 1 to 5 above, is true according to the information received and believed to be true. This verification is made at on the day of

District Government Pleader.

Received on 5.12.1945.
Registered on 7.12.1945.
Decided on 21.1.1947.

In the court of the Jt. Civil Judge, S.D.,

At Belgaum.

Exh. 46.

Civil suit No. 446 of1945.

Pleaders.

M/s.Nyamagoudar & G.P.Kulkarni. 1. Bhimappa Hanamappa Dodramannavar, Berad, Agriculturist,age 30, inhabitant of Mannikeri Taluka Gokak ... ... Plaintiff.

Against

Mr.B.V.Jakati, Govt.Pleader. 1. The Province of Bombay(the summons to be served on the Collector of Belgaum)

Mr.J.M.Sirdeshpande 2.Somappa Venkappa Dodramannavar now styling himself as the adopted son of Hanamappa Dodramannavar,Berad,Agri. aged 30,inhabitant of Mannikeri Taluka Tokak.

In person (later on absent.) 3.Yallawwa w/o.Hanamappa Dodramannavar, age 25, caste occ. and residence -do-. ...Defendants.

Claim Rs. 880-0-0 for court-fee and
" 5700-0-0 for jurisdiction.

The plaintiff sues to obtain the following reliefs:- (1) A declaration that he was the validly and legally adopted son of the deceased Hanmappa Ramappa Dod Ramannavar (2) for possession of the lands described in para one of the plaint (3) A declaration that he was eligible to serve as a Sanadi of the village Mannikeri in Gokak Taluka in place of the deceased Hanmappa and (4) to recover costs of suit and future mesne profits from the date of suit till recovery of possession from the defendants Nos. 1 and 2.

Plaintiff alleges in the plaint that the plaint lands are Shet sanadi lands of the village Mannikeri in Gokak Taluka, that one Hanmappa Ramappa Dod-Ramannavar

was the last owner of the said lands, that he was officiating as Sanadi of Mannikeritill his death on 18.12.41, that he left no male issue behind him,but two widows by name Lakawwa and Yelawwa (deft.no.3) that the former was the senior widow, that she has adopted the plaintiff with due ceremonies on 23.1.1942, at Manhikeri, and passed a registered deed of adoption on 30.1.1942, that plaintiff thus became clothed with all the rights of a natural born son of Hanmappa and began to enjoy all his property including the plaint lands, that the deft.no.2 styling himself as the adopted son of the deceased Hanmappa or in the alternative as his nearest agnate applied to the Mamlatdar of Gokak to appoint him as sanadi in place of the deceased Hanmappa and to assign the suit lands as remuneration for the same, that the Prant Officer, N.D. held an inquiry and appointed the plaintiff as sanadi on 12.3.1942, in place of Hanmappa, that the Collector confirmed the Prant's order and dismissed the appeal of the defendant No.2 on 19.6.1942, that an appeal preferred by the defendant No.2 to the Commissioner, S.D. the latter reversed the order of the Collector,appointed the defendant No.2 as sanadi holding him to be the adopted son of the deceased Hanmappa and ordered the delivery of possession of the suit lands to him, that the plaintiff preferred an appeal to the Government but it was rejected on 14.2.1944; that the Commissioner's order was illegal and ultra vires, that the defendant No.2 was not the adopted son of the deceased Hanmappa, that the latter made no adoption during his life-time and that the plaintiff was his legally adopted son. Hence,the suit to obtain the reliefs as mentioned above.

The defendant No.1, the Provincial Government of Bombay, contends in its written statement exh.12 that it is not interested in the question as to whether the plaintiff or the defendant No.2 is the validly adopted

son of the deceased Hanmappa, that it is prepared to accept the court's decision on this point, that the plaintiff's claim for a declaration that he was eligible for sanadi service and for the restoration of possession of the sanadi lands to him, amounts to a claim against the Government relating to lands held for service and is therefore barred under the fourth paragraph of section 4(a) of the Bombay Revenue Jurisdiction Act, that the suit as against the Government is barred under Article 14, Schedule I of the Indian Limitation Act, that the lands held for the performance of the Shet sanadi service and the office of the Shet Sanadi are not hereditary and watan property, that the lands are held for the performance of the Shet sanadi and if the sanadi ceases to perform the said service or is considered unfit or incapable of performing the service, the Government has a right to appoint a new sanadi in his place, resume the service lands and regrant them to the new official or for his remuneration, that the Commissioner's order is therefore legal, that the suit was not maintainable and should be dismissed with costs.

The defendant No.2 in his written statement, exh.22, contends that the deceased Hanmappa himself has adopted him, that Lakawwa has not adopted the plaintiff and even if she has, the said adoption was invalid and illegal. In other respects his contentions are the same as those of the Government, The defendant No.3 in her written statement Exh.17 admits the plaintiff's claim and denies the defendant No.2's adoption by the deceased Hanmappa, On the above pleadings, the following issues were framed at Exh.19.

Issues.

(1). Does plaintiff prove the factum of his adoption by Lakawwa, the senior widow of Hanmappa Dod-Ramanavar?

(2) If so, is the said adoption valid and legal ?

(3) Are the plaint lands watan lands governed by the Bombay Hereditary Offices Act, 1874?

(4) If so, is Government entitled to resume them on the death of Hanmappa and re-grant them to anybody it chose?

(5) If not, is plaintiff entitled to the possession sought ?

(6) Is the suit barred under Section 4 of the Revenue Jurisdiction Act ?

(7) Is it barred under Article 14 of the Limitation Act ?

(8) Is plaintiff entitled to the declaration sought in para 14(b) of the plaint ?

(9) What decree should be passed ?

The following issue was added after the defendant no.2 put in his appearance and gave his written statement at Exh. 22.

(10) Does defendant No.2 prove his alleged adoption by Hanmappa?

F i n d i n g s.

(1) Yes. (2) Yes. (3) Yes. (4) No;not in the circumstances of the case. (5) yes. (6) The plaintiff's prayer that it be declared that he was eligible for sanadi service is barred. (7) No. (8) No.
(9) As below. (10) Not proved.

R e a s o n s.

Issue No.1:- The plaintiff is examined at Exh.37 and his adoptive mother, - his natural sister - Lakkawwa at exh.40. Lakawwa is admittedly the senior widow of the deceased Hanmappa. There is a registered deed of adoption passed by her in the name of the plaintiff(exh.39). Exh.38 for the plaintiff is an attesting witness on the said deed of adoption. Hanmappa died on 18.12.1941. Plaintiff's adoption is said to have taken place on 23.1.1942 and it

is a week after that the deed of adoption has come to be passed. The plaintiff is a grown up person. At the date of hearing he was about 30. At the time of his alleged adoption he was about 25. He speaks to his personal knowledge about the factum of adoption, the giving and taking. Lakkawwa tells us of having taken the plaintiff in adoption. The witness exh.38 states that he was present at the adoption ceremony and that there was the giving and taking. The defendant no.3, the junior widow admits the plaintiff's adoption in her written statement. Plaintiff's natural mother who gave him in adoption could not be examined as she was ill and has become practically deaf on account of oldage. The deft. no.2 who is examined at exh.42 states as follows in paragraph 5 of his deposition:- " After the death of Hanmappa, Lakawwa, Yellawwa (deft.3) and plaintiff began to stay in the house of Hanmappa. They jointly began to make wahitat of the family lands. Hanmappa owned two Raitav lands viz.(1) Rokkad Hola and (2)Bogadd Hola. These lands did not come into my possession. Plff. sold them to others after his adoption .....Plaintiff took ppssession of the two bullocks which belonged to Hanmappa. Lakkawwa has taken the plaintiff in adoption a month after the death of Hanmappa. The ceremony took place in the house of Hanmappa where Lakkawa lived". The Officiating Patil and Kulkarni of Mannikeri appear to have associated themselves with the plaintiff's adoption. The Patil has attested the deed of adoption whereas the Kulkarni has identified Lakkawwa before the Sub-Registrar. Both of them have died since the -- plaintiff's adoption. In view of the facts mentioned above, I donot think that there is any difficulty in holding the factum of the plaintiff's adoption proved. I record my finding in the affirmative on issue No.1.

Issue No,10:- So far as the alleged adoption of defendant No.2 by the deceased Hanmappa himself, there is very little evidence on the record. This adoption is said to have taken place 4 days before his death. There is no deed of adoption or other writing to prove this adoption. Besides himself, the defendant No.2 examined one witness at Exh.43. I was not much impressed either with the testimony of defendant No.2 or of his witness on the question of the former's adoption by Hanmappa. I am not at all inclined to believe them and hold the defendant No.2's adoption proved. The defendant No.2 is Hanmappa's divided brother's son. He is admittedly the deceased's nearest agnate. That fact is no doubt in his favour but the evidence about his adoption is so megre and unsatisfactory that it is impossible to hold it as proved. If not a registered deed of adoption, at least a vardi could have been given by the deceased to the Village Officers informing them about the adoption of the defendant No.2. It is said that the village officers were present at the latter's adoption. So, it was much more easier to give the vardi. The defendant no.2 did not even examine his own mother and on the ground of her alleged illness. It is said that some 15/20 people attended his adoption ceremony. Defendant no.2 could have examined one or two responsible persons to testify the factum of his adoption. As it is, I am not at all prepared to hold that the defendant No.2 has succeeded in proving his adoption. I record my finding in the negative upon this issue.

Issue No.2:- In view of my findings on issues Nos. 1 and 10, my finding on this issue is in the affirmative.

Issue Nos. 3 and 4:- The plaintiff lands are admittedly shet sanadi lands. It has been held in Limbaji V. Rama (1898 Printed Judgments127) and Vishny

Vishnu v. Shankar (35 Bom. L.R. 114) that shet sanadi lands are watan lands governed by the provisions of the Bombay Hereditary Offices Act. In the latter case, Justice Baker observes as follows on pages 115-116:-"As regards the question of whether shet sanadi land is watan -- property under the watan Act or not, the matter is really concluded by ~~xhx~~ authority, although Government as the result of an inquiry held in 1900 came to the conclusion that they would not treat it as such. We have not got the materials before us on which Government based that conclusion and we are still bound by the ruling in Limbaji v. Rama ..... The question in the case Limbaji V. Rama was whether shet sanadi's holdings were impartible or not and in order to arrive at a conclusion on that point, the whole question of the nature of the lands and whether they were watan lands or not were gone into at great length by the Bench before whom the case came and in the judgment of Mr. Justice Ranade ... it has been repeatedly stated that ~~xx~~ both in view of the earlier decisions which are referred to Bhimappa V. Mariappa and Purushottom Talwar v. Mudkaigavda Shidgavda and the history of the lands, a shet sanadi holder is a watandar and his interest in the land is that of a watandar. The occupation of the land does not represent the payment made for the office. This payment is represented by a fraction of the assessment, which is not recovered from the holder and ~~xhis~~ assessment may be increased by the Collector if he deals with the watan under Section 64 of the Watan Act. This decision had never been overruled and is binding upon us, and although the Government, as the result of the subsequent enquiries may have come to a different conclusion, their conclusion is not binding on us and as I have already said, in the present case, we have not got materials before us on which that conclusion is based."

Justice Broomfield in his concurring judgment, observes as follows on page 117:- "As to the question whether shet sanadi lands are watan or not, we are bound by the decision in Limbaji's case and with respect I see no reason to differ from that decision, the Government Resolutions to the contrary not-withstanding."

This court is bound by the rulings of the High Court and not by Government Notifications. No fresh materials were placed before me on behalf of the Govt. which were not before the courts in the reported cases. After a discussion of the Government resolutions and the rulings of the High Court on the point, Mr. Phadnis observes as follows on page 245 of his Watan Act (1936 Edition) :- "The following results followed from the previous discussion (1) Sanadi holding is watan until the decision in Limbaji V. Rama is overruled (2) occupancy of sanadi land does not represent the payment made for the office, it is represented by the fractuon of the assessment not recovered from the holder. This will also hold good as long as the ruling in Limbaji V. Rama is not over-ruled in this respect. (3) Government have powers to deal with these holdings under the rules now in force and published in G.R.No.10336 of 1908 made under powers conferred on them by Act XI of 1852 and Bom. Acts II and VII of 1863 which powers are reserved to them by Section I clause (3) of the Watan Act."

These resumption rules are to be found on pages 248,249 and 250 of Fadni's Watan Act. We are not concerned with rules 1,2 and 3. Rule 4 reads as follows:-"Service lands which do not fall under No.2 or 3 of these rules, shall be continued, subject to the provisions of Bombay Act III of 1874 and of any other law for the time being in force relating thereto to the heirs of the present holders ..... without restriction as to adoption or female or collatral succession, but such lands shall be resumed in default of

any hair in whom, in the ordinary course of decent, the deceased holder's private property would vest .... provided that if the Collector is at any time satisfied that the service, in respect of which any such lands are held, is no longer performed or that its performance is no longer necessary or that for the service -- performed, the remuneration derived from the profits of the enjoyment of such lands is unnecessarily high or in the case of service lands to which the provisions of Bombay Act III of 1874 do not apply, if it shall appear that the holder has been guilty ofany serious offence or misconduct, or that such lands or any part thereof as any of the profits thereof have or has, by succession or otherwise, come into the possession of female or a person other than the person, who for the time being is duly authorised to perform and does actually perform the service in respect of which such lands are held, the Collector may in his discretion direct either (1) the resumption of such lands (2) the continuance of the same subject to such new conditions as he shall deem fit to impose or (3) the resumption of a portion of such lands and the continuance of the rest thereof, subject to such conditions as aforesaid.

Rule 5 deals with alienations with which we are not concerned in this suit. Rule 6 reads:- It shall be lawful for the Collector, whenever it may be necessary in carrying out any of the provisions of No.4 of 5 of these rules:- (a) to summarily evict any person wrongfully in possession of any land or (b) to levy any rent due by any person in the manner that may be prescribed for for the time being in force for the levy of a Revenue demand.

Rule 4 which is the most important of the rules, does not seem to apply to the facts of this case.

Although Hanamappa died without any male issue, his senior widow has adopted the plaintiff after his death. This adoption relates back to the death of Hanmappa so far as the continuance of the live is concerned. Rule 4 does not place any restriction on adoption. The property of the deceased Hanmappa has devolved upon the plaintiff under the Hindu Law by which the parties are governed. Plaintiff is not unwilling to perform the sanadi services. The result of the rulings mentioned is that the provisions of Bombay Act III of 1874 do apply to the shet sanadi holdings. It follows from the ruling in Limbaji Rama that the Government has no power to resume the possession of the lands because, the grant is of the Royal share of the revenue only and not of the soil. Therefore, --- resumption, by the Government, can only extend to the levying of full assessment and nothing more. The la-tter part of rule 4 does not come into operation, because the sanadi lands are subject to the provisions of the Watan Act.

The Prant Officer held the factum of the plaintiff's adoption proved and that of the defendant No12 not proved. That is the reason why he ordered that the plaintiff's name should be entered to the sanadi lands standing in the name of the name of the deceased Hanmappa and the sanadi service should be taken from Bhimappa(exh.36) The Collector summarily rejected the defendant No.2's appeal against the order passed by the Prant Officer (exh.35). The Commissioner,S.D.observes as follows, in his order:- "It seems that the Prant Officer and the Collector have mainly relied on the registered-deed without inquiring into the claims of Somappa(deft.2) and have held the respondent as the validly adopted son of Lakawwa. But it is to be noted that Somappa comes from the sanadi family and is stated to have been looking

19 -45 29

looking after the lands of the deceased Hanmappa during the latter's illness. The story of Somappa's adoption by the deceased seems to be therefore true and believable . His conduct in approaching the Mamlatdar first with his claim appears quite natural. I, therefore, accept Somappa as the adopted son of the deceased. The respondent is at liberty to go to Civil Court if he so desires to have his own adoption as declared valid. I set aside the order of the Prant Officer confirmed inappeal by the Collector and appoint Somappa, adoptive father Hanmappa, as sanadi vice Hanmappa deceased. The sanadi lands should be put in the possession of Somappa." (exh.34) The Government summarily rejected the plaintiff appeal against theorder of the Commissioner(exh.33).

Now, it is apparent that the Commissioner's order was based upon the fact of his finding that the defendant no.2 was the adopted son of Hanmappa, If that is a fact then the plaintiff's adoption is invalid and illegal and he is out of court. The Commissioner gave liberty to the Plaintiff to go to a civil court and get the factum and validity of his adoption declared. The plaintiff has accordingly came and I have held his adoption to be valid, because the defendant no.2 has failed to prove the factum of his adoption. The -- commissioner's order implies that if the plaintiff was successful in the civil court, he would be recognized by the Revenue authorities as the validly adopted son of the deceased Hanmappa and if found fit in other respects, would be appointed a sanadi.

My finding on issue no.3 is in the affirmative. Plaintiff therefore succeeds to the deceased Hanamappa and is entitled to the possession of the plaint lands which were the watan property of the deceased. In view of this, the Government would not be entitled to take actual possession of the plaint lands from the plaintiff

and hand them over to the defendant No.2.If Government finds that the plaintiff is incompetent to serve as a sanadi,then it may levy full assessment on the lands or even rent and out of the same find remuneration for the officiator for the time being.

It was conceded by the plaintiff's learned Pleader that the declaration sought in plaint para 14(b) regarding the eligibility of the plaintiff for sanadi service was barred under the fourth paragraph of Sec.4(a) of the Bombay Revenue Jurisdiction Act. It is for the Government and its officials to say whether a particular individual is fit or suitable for any post under the Crown, I donot think that the suit is barred under article 14 of the Limitation Act. Plaintiff is not seeking to set aside any order passed by any Government servant.His suit is for declaration that he is the validly adopted son of the deceased Hanmappa and to recover possession of his adoptive father's watan property which he is legally entitled to under the law.The suit is therefore,not barred by limitation under article 14 of the Schedule I. I record my findings as above upon the points raised and pass the following order.

Order.

(1) It is hereby declared that the plaintiff is the validly and legally adopted son of the deceased Hanmappa Ramappa Dodramannavar of Mannikeri,Taluka Gokak.

(2) Plaintiff may recover possession of the plaint lands from the defendants Nos.1 and 2.

(3) He may recover costs of suit from defts.1 and 2.

(4) He may further recover mesne profits from the date of suit till recovery of possession or three years from the date of this decree whichever event first occures from the deft.2.Inquiry as to the same to be made under Order 20,rule 12 cl.1(c) of C.P.C.

(5) Defendants to bear their respective costs of suit.

Sd.M.S.Bagali.
21.1.1947. Jt. Civil Judge,S.D.Belgaum.

Belgaum Civil Suit No. 446 of 1945 has been decided adversely to Government. For a summary of facts and the points of law involved, attention is invited to the note at p. 17. The result of the suit, so far as it affects Government is that as expected, the Court has held relying upon the decisions of Limbaji v. Rama (1898 P.J.127 and Vishnu v. Shanker 55 Bom. L.R. 114) that shet sanadi lands are watan lands governed by Bombay Act. III of 1874. The Court was bound to come to this conclusion even though Government was not a party to those cases. The correctness of these two decisions has however been challenged in second Appeal No. 1150 of 1944 (in Dharwar Civil Suit No. 63 of 1940) which is still pending in the High Court.

In this suit, therefore, on principle, an appeal may be filed. The D.G.P. has forwarded a copy of his report to the Collector for appeal but the Collector's report is not yet received. Judgment was delivered on 21-1-1947 and the period of appeal would be thirty days excluding the days required for obtaining certified copies of judgment and decree. It is therefore for orders whether an appeal should be immediately sanctioned.

HSS.27/2.

27/2/47.

ALR An appeal may be filed

RLA

Secy RD

D.G.P's Letter No. O.S.446/45 dt 6-3-47
(R.I. 2963/123-47)

2

Decree.

In the court of the Joint Civil Judge, S.D.,
At Belgaum.

Reg. Civil Suit No.446 of 1945. Exh.47.

1. Bhimappa Hanmappa Dodramannavar, Berad, agri., age 30, of Mannikeri, Tal. Gokak ... ...Plaintiff.

Vs..

1. The Province of Bombay (Summons to be served on the Collector of Belgaum).
2. Somappa Venkappa Dodramannavar, now styling himself as the adopted son of Hanamappa Dodramannavar, Berad, agri., age 30 of Mannikeri, Tal. Gokak.
3. Kallavva kom Hanmappa Dodramannavar, age 25, caste, Occu. and residence -do- --- --- Defendant.

ClaimRs. 880/- for court fee.
" 5700/- for jurisdiction.

Received on 5.12.1945.

Registered on 7.12.1945.

The plaintiff states as under:-

1. The subject matter of the suit consists of lands described below:-

S.No.	Area.	Assessment.	Price.
46	35-33	6-0-0	1800
64	10-23	3-0-0	700
65	2-25	7-0-0	400
133	11-36	7-0-0	1800
195	13-11	3-0-0	1000

2. The lands described above are Shet-sanadi lands siatuated at village Mannikeri Tal. Gokak which belonged to Hanmappa Rammappa Dodramannavar who enjoyed them as owner till his death which took place on 18.12.1941. He was serving as Sanadi Mannikeri during his life time.

3. In addition to the property described above the decease Hanmappa left some Raitava lands and one house. The plaintiff is in actual possession of the house and has alienated the Raitava lands.

4. Hanamappa died leaving behind him surviving two widows Lakkava and defendant no.3. Lakkavva is the senior widow and defendant no.3 is the junior widow of deceased Hanamappa.

5. Plaintiff is the younger brother of Lakkavva the senior widow of Hanamappa . Hanamappa had no make issues nor had he adopted any one during his life time.

6. After the death of Hanamappa his senior widow Lakkavva adopted plaintiff as a son to Hanamappa with due ceremonies at Mannikeri on 23.1.1942, and executed a deed of adoption in the name of the plaintiff on 30.1.1942 and got it registered also. Thus, by the said adoption plaintiff became clothes with all the rights of a natural born son of Hanamappa and began to enjoy all his property as his son including the suit lands.

7. This being the real and normal state of things, deft.no.2 styling himself as the adopted son of decd. Hanmappa or in the alternative as the nearest relative applied to the Mamlatdar of Gokak to appoint him as the Sanadi in the place of deceased Hanamappa and to assi n the suit lands to him. After an enquiry regarding this application the Prant Officer,N.D.appointed on 12.3.1942 plff.as the Sanadi in place of Hanamappa. On an appeal preferred by deft.2 against the order of the Prant N.D. to the Collector, the latter upheld the order of the Prant Officer and dismissed the appeal of deft.no.2 on 19.6.42. In appeal preferred by deft.2 to the Commissioner,S.D. against the orders of the Prant Officer and the Collector, the former reversed the orders of both the lower courts and appointed deft.no.2 as Sanadi holding him to be the adopted son of deceased Hanamappa and ordering the delivery of possession of the suit lands to him on 5.7.1943. Plff. preferred an appeal to the Govt.of Bombay, R.D., which was rejected on 1.2.1944.

8. Deft.2 is not the adopted son of deceased Hanamapa.

67 ~~44~~ 25

Hanamappa had not adopted him during his life time. The alleged adoption set up by deft.no.2 is entirely false and has no baring in truth. Backed by the order of the Commissioner,S.D., dated 5.7.43 deft.no.2 has taken possession of the suit lands and has been enjoying them unautherisedly. Deft.no.2 has no title to the suit lands. This possession of the suit lands is that of a trespasser. The order on which deft.no.2 relies for justifying his possession is not only illegal,but ultra vires. The Commissioner,S.D.has arrogated to himself the duties and functions of a Civil Court by sitting in judgment, over the questions of title of the rival claimants. The Commissioner's order that the ~~deftpp~~- deft.no.2 is the adopted son of deceased Hanamappa is void ab initio as he was incompetent to give finding on the adoption of plff. or the alleged adoption of deft.no.2. So, theorder of the Commissioner is illegal,ultra vires and without jurisdiction. Therefore, the plff. had to file the present suit against the defts.that plff.is the legally and validly adopted son of deceased Hanamappa and entitled to serve as Sanadi in the place of deceased Hanamappa and for possession of the suit lands from deft.no.2.

9. The cause o f action for the suit arose in the month of July 1943 both for declaration and possession.

10. This court has jurisdiction to try this suit as it is within its special jurisdiction.

11. The claim for the court fee is valued as follows:-

(1) Two declarations	400-0-0
(2) for possession of suit property assessment Rs.21 X 7½ =157-8-0	
(3) Suit lands: difference between assessment & Judi(Nafa Rs.21-8-0 X 15 times)= 322-8-0	480-0-0
	880-0-0

12. Notice as required by law has been given to deft.1.

13. Deft.no.2 is in actual possession of the suit lands. Deft.no.3 is the Junior widow of deceased Hanamappa.

14. Plff.prays:-

(a) Declaring plff.as the legally and validly adopted son of deceased Hanamappa and the properties of said Hanamappa be given in possession of plff.from deft.

(b) Declaring plff.as the person eligible to serve as Sanadi in place of deceased Hanamappa.

(c) The costs of this suit may be awarded.

(d) Future mesne profits may be awarded.

(e) If necessary, it may be permitted to amend the plaint.

The suit coming on before M.S.Bagali, Esq.,Joint Civil Judge, S.D.,in the presence of Messrs.G.P.Kulkarni and D.H. Hyamgoudar,Pleaders for the plff.and Mr.B.V.Jakati,Pleader, for defendant No.1 and Mr.J.M.Sirdeshpande pleader for deft.2 and deft.3 exparte:

It is hereby ordered that :-(1) It is hereby declared that the plaintiff is the validly and legally adopted son of the deceased Hanamappa Ramappa Dodramannavar of Mannikeri, Tal. Gokak,(2) plff.may recover possession of the plaint lands from the defts.1 and 2 (3) He may recover costs of suit from defts. and 3. (4) He may recover future mesne profits from the date of the suit till recovery of possession or three years from the date of this decree whichever event first occurred from the defendant no.2. An inquriy as to the same to be made under Order 20 rule 12 clause 1(c) of the C.P.Code. (5) Defts.to bear their respective costs of suit.

Bill of costs.

	Plaintiff. Rs.As.Ps.	Deft.1. Rs.As.Ps.	Deft.no.2. Rs.As.Ps.
.Stamp for plaint.	83-0-0	0-0-0	0-0-0
. -do- to power ...	1-4-0	0-0-0	0-10-0-
. -do-to Exhs.	6-4-0	1-4-0	1-4-0
.Pleaders fees on Rs.5700/-. .. .	204-0-0	204-0-0	204-0-0.
.Process fees	23-4-0	0-0-0	0-0-0
.Copying fees	2-4-6	0-0-0	0-0-0
.Witness Potagi	5-0-0	0-0-0	0-0-0
Total..	325-0-6	205-14-0	205-14-0
ejected costs n Exhs.only ...	0-10-0	1-4-0	1-4-0
	324-6-6	204-10-0	204-10-0

Given under my hand & the seal of the court,this 21st Januar

7327

Suits.

Belgaum.

For a declaration that the plaintiff is the validly adopted son of the deceased Hanmappa Ramappa of Mannikeri and as such eligible to serve as a sanadi in place of the deceased Hanmappa and for possession of the suit properties belonging to the latter.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 3841.

Bombay Castle, 22nd May 1946.

Letter from the Collector of Belgaum, No. L.A.W. 669, dated the 23rd February 1946—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.

Civil Suit No. 446 of 1945.

Bhimappa Hanmappa Doramannavar ... ... Plaintiff;

versus

The Province of Bombay and others ... ... Defendants.

Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 354, dated the 5th March 1946—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Belgaum, No. 3840, dated the 22nd May 1946—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original

P. N. MOOS,
Secretary to Governmen

G. R., No. 3841, L. D., dated the 22nd May 1946.

To

* The Revenue Department,
* The Commissioner, Southern Division,
* The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

No. of 1946.

Copy forwarded for information and guidance to

29 95

BELGAUM CIVIL SUIT No. 446 OF 1945.

Chronological Statement of Facts.

The suit is for a declaration that the plaintiff is the validly adopted son of the deceased Hanmappa Ramappa of Mannikeri and as such eligible to serve as a sanadi in place of the deceased Hanmappa and for possession of the suit properties belonging to the latter.

2. On 18th December 1941, Hanmappa, the officiating sanadi of the village of Mannekeri died leaving two widows Lakkawa (senior) and Yallawa.

3. On 16th January 1942, Sommappa the defendant No. 2 applied to the Mamlatdar stating that he had been adopted by the deceased Hanmappa, that he had been looking after the lands of the deceased during the latter's illness and that he may be appointed as officiating sanadi in place of the deceased. On 23rd January 1942, the senior widow Lakkawa adopted the plaintiff by a deed of adoption which was registered on 30th January 1942.

p. 23 of file.

4. By his order dated 12th March 1942, the Prant Officer recognised the adoption of the plaintiff and directed that his name should be entered to the sanadi lands standing in the name of the deceased Hanmappa and sanadi service should be taken from him.

p. 25 do.
p. 31 do.

5. Somappa made an appeal to the Collector which was summarily dismissed on 7th June 1942. In the second appeal, however, the Commissioner, Southern Division, reversed the order of the Collector and Prant Officer and held that defendant No. 2 was the validly adopted son of Hanmappa and directed that he should be given possession of sanadi land. Plaintiff made an appeal to the Bombay Revenue Tribunal who rejected it on the ground that the appointment of a sanadi not being a revenue case the Tribunal had no jurisdiction. Plaintiff made a further petition to Government who declined to interfere. The plaintiff has therefore filed the present suit in the Court of the Civil Judge (Senior Division), Belgaum.

p. 33 do.

p. 45 do.

p. 49 do.

Grounds of Defence.

Government is not interested in the question whether the plaintiff or the defendant No. 2 is the validly adopted son of the deceased Hanmappa. This is a matter in issue between themselves and they should be left alone to get it decided by the Court for themselves. Government need not join issues with any part on this question.

2. *Jurisdiction.*—The plaintiff has however contended that as the validly adopted son of Hanmappa, he is eligible for sanadi service and is entitled to possession of Sanadi lands which are held for service. This is a claim against the Crown relating to lands held for service and therefore, under the fourth paragraph of section 4 (*a*) of the Bombay Revenue Jurisdiction Act, 1876, the Court has no jurisdiction to entertain this suits so far as this relief is concerned.

3. *Limitation.*—The suit is in effect a suit to set aside or avoid the Commissioner's order dated the 5th July 1943 appointing defendant No. 2, as sanadi in place of the deceased Hanmappa and directing that he should be given possession of the suit lands. The suit was filed on 5th

December 1945, that is, after the expiration of one year from the date of that order. It is therefore, time barred under Article 14 of Schedule I read with section 15 (2) of the Indian Limitation Act. It should be contended that in computing the period of limitation under that Article the plaintiff will not be entitled to exclude the time spent in prosecuting fruitless appeals and petition to the Revenue Tribunal or Government (Ganesh *v.* Secretary of State I. L. R. 44 Bom. 451).

4. Without prejudice to the foregoing contention and assuming that the plaintiff's adoption is valid, it should be contended that the plaintiff is not entitled as of right to possession of sanadi lands. It is likely that the plaintiff may rely on the High Court's decisions in *Limbaji* v. *Rama* 1898 P. J. p. 127 and *Vishnu* v. *Shanker*, 35 Bom. L. R. p. 114 in which it has been held that the office of a Shet sanadi and the lands held by him are watan and that the Bombay Hereditary Offices Act, 1874, applies to them. It should be pleaded that Government was not a party to those cases and is not bound by those decisions. The question as regards the legal position of Shet Sanadis has been considered from time to time by Government and its conclusion generally is that Sanadis are not Watandars, their office is not hereditary and the lands held by them are not watan property falling under the Bombay Hereditary Offices Act, 1874. For a full discussion on this subject the attention of the District Government Pleader is invited to the Watan Act, by Phadnis, Appendix II, pp. 240–246. This view of Government and the evidence on which it rests have been placed before the Court in Dharwar Civil Suit No. 63 of 1940, which is now pending in the High Court as second Appeal No. 1150 of 1944. Probably, in the present suit, the Court will follow the previous decisions of the High Court, unless in the meantime the High Court accepts the view of Government. It is not however necessary in this case to tender the voluminous evidence on which Government's opinion is based. All that is necessary is to put on record a plea that Government is not bound by the High Court's decisions to which it was not a party and that Government does not admit that Sanadis are hereditary servants governed by the Watan Act.

5. It should therefore be contended that the suit against Government fails and must be dismissed with costs.

Suit:-
Belgaum.
For a declaration that the plaintiff is the validly adopted son of the deceased Hanmappa Ramappa of Hannikeri and as such eligible to serve as a sanadi in place of the deceased Hanmappa and for possession of the suit properties belonging to the latter.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 491/4
Bombay Castle, 14th May 1947.

p.5 Read Government Resolution, Legal Department, No. 3841, dated the 22nd May 1946.

p.31 Endorsement by the District Government Pleader, Belgaum, No. D.G. 446/45, dated the 28th January 1947 - Forwarding a copy of his letter of even date addressed to the Collector of Belgaum together with a copy of the judgment and stating that the suit noted in the margin was decided by the Joint Civil Judge (Senior Division) Belgaum on 21st January 1947 when the following order was passed :-

In the Court of the Civil Judge, (Senior Division), Belgaum.
Civil Suit No. 446 of 1945.

Bhimappa Hanmappa Doramannavar - Plaintiff;
Vs.
The Province of Bombay & others - Defendants

"(1) It is hereby declared that the plaintiff is the validly and legally adopted son of the deceased Hanmappa Ramappa Dodramannavar of Hannikeri, Taluka Gokak.
(2) Plaintiff may recover possession of the plaint lands from the defendants Nos. 1 and 2.
(3) He may recover costs of suit from defendants 1 & 2.
(4) He may further recover mesne profits from the date of suit till recovery of possession or three years from the date of this decree whichever event first occures from the defendant 2. Inquiry as to the same to be made under Order 20, rule 12 cl. 1(c) of Criminal Procedure Code.
(5) Defendants to bear their respective costs of suit."

p.53 Letter from the Collector of Belgaum No. LAW 669, dated the 11th February 1947 - Forwarding a copy of the letter from the District Government Pleader, Belgaum No. D.G. 446/45, dated the 28th January 1947 - Stating that a Civil Appeal may be filed against the order of the Joint Civil Judge, (Senior Division) Belgaum dated the 21st January 1947.

Endorsement by the Commissioner Southern Division, No.L.S.T. 354, dated the 23rd February 1947 - Forwarding the above with his concurrance.

p.61 Letter to the Government Pleader, High Court, Bombay, No. 2414, dated the 12th March 1947 - Requesting him to take necessary steps to file an appeal in the High Court, Bombay.

RESOLUTION:- Sanction is accorded to the institution of an appeal in the High Court Bombay against decision of the Joint Civil Judge (Senior Division) Belgaum, dated the 21st January 1947 on the lines of the brief accompanying Government Resolution

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Legal Department, No. 3841, dated the 22nd May 1946.

By order of the Governor of Bombay,

Original R. M. Mehta
R. M. Mehta,
Assistant Secretary to Government.

To

The Revenue Department,
The Commissioner, Southern Division,
The Collector of Belgaum,
The Government Pleader, High Court, Bombay

Gnc. 13.5.
NKP
13/5

Subd. for signature.

KBB
13/5

S.A.S
13/5

Issued
14/5

Subd. after issue

Papers may be filed in S. Bel /46 (New file).

KBB
13/5

S.A.S
13.5

S. Bel. 46

Legal Department,
R.I.No. 14416 dated 2-12-47

Submitted.

From the suit files in the department ~~it~~ in appears that in Dharwar a suit No. 94 of 1947, wherein the questic of Shetsanadis is involved, is still pending (papers plac below). The D.G.P, Dharwar may therefore, be requested t produce all the documentary evidence produced in Dharwar A | Suit No: 63 of 1940 and to invite the court to give its decision in the light of the evidence adduced. It is ascertained from the High Court that the record in S.A. No. 1150 of 1944 has been sent back on 16-12-47 and it will hence be possible for the D.G.P. to obtain the necessary documents from the District Court.

The Shetsanadi suit in Belgaum, No.446 of 1946, has been decided and the appeal preferred by Government in th High Court under G.R., L.D., No. 4914, dated 14-5-1947 must be still pending. Inquiry may be made with G.P. B | H.C. as to when this appeal is likely to come up for hearing and special instructions may be given to him regarding the conduct of the case.

Letters will be put up on return of the case to office.

N.P.R.
20-12.

A.S. 'A' & 'B' may be done in the first place. This has re ference to 'A' on p. 17 ante.

R.M.M.
20-12-47

RLA Id.

Memorandum of Instructions.

A Division Bench of the High Court (Sen and Bavdekar, JJ) decided second appeal No. 1150 of 1944 filed by the unsuccessful plaintiff appellant in Dharwar Civil Appeal No. 73 of 1942 from the decree in Dharwar Civil Suit No. 63 of 1940. This was the suit in which Government contended, and led evidence to show, that Shet Sanadi holding was not Watan property governed by the B Bombay Hereditory Offices Act 3 of 1874. The suit land, Survey No.10-B of the village of Yellapur which was service land granted for the remuneration of Shet Sandis (Village servants useful to Government) was ordered to be resumed by the Assistant Collector, under rule 4 of the Resumption Rules of 1908 on the grounds that (1) the land had been alienated to outsiders without authority, and (2) the sanadi was also fully remunerated from the profits of the other assigned lands. This order of resumption was challenged by the plaintiff in the suit which was decreed in his favour by the trial Court but dismissed by the Lower Appellate Court. The High Court has set aside the lower Appellate Court's decree and restored that of the trial court.

This was a test case which was expected to settle once for all the conflict between the Government and the High Court as to the character of Shetsanadi lands. The High Court has consistently held (in suits to which Government was not a party) that Shetsanadi lands were Watan lands, whereas Government has held the contrary view*

See Phadnis Watan Act. p. 240-46.

The Assistant Collector's order of resumption was sought to be supported under rules 4 and 6 of the Resumption Rules of 1908. Rule 4 provides inter-alia that service lands not falling under rules 2 and 3 should be continued subject to the provisions of Bombay Act 3 of 1874 and of any other law for the time being in force. The proviso to the rule lays down inter-alia that if the Collector is at any time satisfied that for the services in respect of which the lands are held, the remuneration derived from the profits of such lands is unnecessarily high, or in

in case of service lands to which the provisions of Bombay Act 3 of 1874 do not apply, if it appears that such lands have gone into the possession of any person other than the person who, for the time being, is duly authorized to perform and does perform service in respect of which such lands are held, the Collector may in hsi discretion, order resumption of such lands. The Collector's power to resume thus arises (a) when in his opinion, the remuneration derived from the profits of the lands is unnecessarily high for the service rendered or (B) when in cases not failing under Bombay Act 3 of 1874, the lands have passed into the possession of a person other than the one who lawfully rendered service. It is thus clear that the land can be resumed when any one of these conditions is satisfied and in this suit, Government's defence was that both the conditions were satisfied.

Unfortunately, the High Court has disposed of this appeal without deciding the principal question as to the character of Shetsanadi lands. Adverting to this point, it is observed by Bavdekar J, "We think that, as far as the present case is concerned, it makes no difference whether Shetsanadi lands are or are not Watan lands, and wr propose therefore to dispose of this appeal without going into the question, though, if the question had to be decided in the absence of any reason as to why we should depart from the view which has so far prevailed, we should have been willing to hold the lands to be Watan lands." The whole case was then disposed of by their Lordships on a consideration of the question whether the Assistant Collector had the power to resume the lands on the ground that for the service performed, the remuneration derived from the profits of the enjoyment of the lands was unnecessarily high. The High Court has held that this proviso to rule 4 did not apply to Shetsanadi lands and that consequently the Assistant Collector had no power to order resumption of the lands on the ground that for the service performed the remuneration derived from the profits of the enjoyment of the land was

was unnecessarily high. With respect, it is pointed ou that that is not the only ground on which resumption could be ordered. The High Court has not considered the latter part of the proviso to rule 4 which says that :-

> " in the case of service lands to which provisions of Bombay Act 3 of 1874 do not apply, if it appears that the lands have gone into the possession of any person other than the person who, for the time being is duly authorised to perform and does actually perform service in respect of which such lands are held, the Collector may in his discretio order resumption of such lands."

It was undisputed that these lands were service lands and that they were held by persons who for the time being did not perform any service to Government. If these lands were not Watan lands, that is to say if they were not governed by the provisions of Bombay Act 3 of 1874, the Assistant Collector's order of resumption was perfectl legal. It was, therefore, necessary to give a finding on this very important question.

The same point is arising in the present appeal. The Government Pleader is, therefore, requested to bring to the notice of the High Court that Government cannot be bound by the decisions in cases to which it was not a party. He should accordingly request the High Court to settle the point in dispute after hearing and perusing th evidence that Government desire to lead in the matter.

94

Send. after cosine.

2. 2ia in S. Bel 2/46.

29R
28/7

AS PR 29/7

S. Bel. 2/46
29/7

Imkdi P. P.--(J) J 9--4000--6-49
G. O., L. D., No. 1193 dated 7-12-15

(Govt. Pl, H. C. Bom.--Spl. Form No. 2)

39 65

Belgaum No. 655/ Belgaum C.S. No. 446/46
2/46 P.D.77

From

THE GOVERNMENT PLEADER, HIGH COURT,

BOMBAY;

DEC 1949

To The Secretary to Government, Legal Department, Bombay.

~~THE DISTRICT MAGISTRATE OF~~
~~THE COLLECTOR OF~~

Bombay, 9th December 1949

SIR,

Referring to G. R. L. D. No. 4914

dated 14th May 1947 . I have the honour to inform you that the Case noted in the margin was heard by the High Court on 11-11-1949 when the following order was passed:—

First Appeal No. 165 of 1947 in
Civil Suit No. 446 of 1945.

The Province of Bombay.
Vs.
Bhimappa Hanmappa Dodrannavar and ors.

" The Court confirms the decree of the Lower Court and dismisses the appeal with costs."

2. An uncertified copy of the High Court judgment is sent herewith.

TO SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
No. 20419
10-12-49

Your most obedient servant,

Government Pleader, High Court.

20419
10-12-49

Submitted with bps (S. Bel. 2/46)

The ~~decree~~ F.A. No. 165 of 1947 instituted by Smt. has been decided against Smt...

~~29-12~~ ... In order ...

H.S.

First appeal No 165 of 1947 filed by Smt. in Suit No 646 of 1945 has been dismissed. The only point was whether the Addl. was the validly adopted son of one Hanumantha and as such eligible to perform ~~Sanadi~~ service in preference to deft. No 2 in whose favour the Commr. had passed this order. Smt's interests have not been affected in any way. The result of the appeal may be viewed.

JLA 30/12

RS 2011

Belgaum.

For a declaration that the plaintiff is the validly adopted of the deceased Hanmappa Ramappa Kannikeri and as such eligible to serve as a sanadi in place of the deceased Hanmappa and for possess of the suit properties belonging the latter.

GOVERNMENT OF BOMBAY.

Legal Department,
Resolution No. 1369
Bombay Castle, 31st January 1950.

Read Government Resolution, Legal Department, No.4914 dated the 14th May 1947.

Letter from the Government Pleader, High Court, Bombay, No.655 dated the 9th Decembe 1949 forwarding uncertified copy of the judgment and stating that civil appeal No.165 of 1947 preferred by Government in the suit noted in the margin was decided by the High Court Bombay, on 11th November 1949, when the following order passed :-

In the Court of the Civil Judge (Senior Division), Belgaum.

Civil Suit No.446 of 1945.

Bhimappa Hanmappa Doremannavar. Plaintiff;
Vs.
The Province of Bombay and others. ..... Defendants.

" The Court confirms the decree of the lower court and dismisses the appeal with costs".

RESOLUTION:- The result of the appeal is recorded.

By order of the Governor of Bombay,

original R. M. Mehta

R. M. Mehta,
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Belgaum.

U.
13.1.50.

Issued
31/1

Initd for Sjnature
24/1
12/2/

4-3

K 760.

		Rs.as.ps.	
Sectioner:-	Mr.P.A.Patwardhan	1--0--0	Rs.8
Examiner:-	Mr.A.U.Patel	0--4--0	
Reader:-	Mr.Narwekar		
Paper charges:--		0--0--6	
	Total Rs...	1--4--6	

Re.one annas four and pies six only.

Supdt. Decree Dept.
-2-3-1950.

Appeal for on 15-11-49
Heard on 2-3-50
Judgment delivered on 23-3-50
sent by V.P.P. Regd. Post on
Assistant Superintendent
6-3

Appeal No.165 of 1947 From Original Decree.

The Government of the Province of Bombay.
(Original Defendant No.1.).. ... Appellant.

Versus

Bhimappa Hanmappa Dodramannavar; and another.
(Original Plaintiff and Defendant No.3.)... Respondents.

Appeal against the decision of M.S.Bagali, Esquire, Joint Civil Judge (Senior Division) at Belgaum in Suit No. 446 of 1945.

Mr.B.G.Thakor, Additional Assistant Government Pleader for the Appellant.

Mr.H.F.M.Reddi, Advocate for Respondent No.1.

.....

Coram:-Chagla C.J. and Gajendragadkar J.

11th November 1949.

Oral Judgment (Per Chagla C.J):--

One Hanmappa officiated as a Sanadi of the village of Mannikeri and he died on the 18th December 1941. Lakawwa his senior widow adopted the plaintiff to her deceased husband on the 23rd January 1942 and the plaintiff applied to be recognised as a Sanadi in succession to his adoptive father to Government and the Prant Officer made an order in his favour on the 12th March 1942. Against this order defendant No.2 appealed to the Commissioner. His contention was that he was adopted by the Junior widow defendant No.3, Yelawwa, in the lifetime of Hanmappa. The Commissioner

reversed the order of the Prant Officer on the 5th July 1943 and held that defendant No.2 was the validly adopted son of Hanmappa and directed that he should officiate asa Sanadi and the Sanadi lands should be given to him. From this order the plaintiff appealed to the Goverrment and the Goverrment confirmed the Commissioner's order on the 14th February 1944. Thereupon the plaintiff filed the suit out of which this appeal arises for a declaration that he was the validly and legally adopted son of Hanmappa, for possession of the Sanadi lands and for a declaration that he was eligible to serve as a Sanadi of the village of Manni-keri in place of the deceased Hanmappa. The trial Court de-clined to give the third relief to the plaintiff on the ground that it was barred by the Revenue Jurisdiction Act; but gave him relief under the first and the second head. The Province of Bombay which was the first defendant has pre-ferred an appeal from this decision.

The contention that is urged before us by Mr.Thakor is that the suit is barred by limitation under Art.14 of the Limitation Act. What is urged is that the order of the Commissioner having been made on the 5th July 1943 the suit should have been filed within one year from that order. As the suit has been filed on the 5th December 1945 the suit is out of time. The very short answer to this contention is that this is not a suit under Article 14 of the Limitation Act. It is not a suit to set aside the order of Goverrment. It is a suit by the plaintiff for a declaration that he is the adopted son of Hanmappa and the second relief he seeks is that if he is the adopted son, as his heir under Hindu law he is entitled to the possession of the lands and property which he died possessed of. The position is made perfectly clear by the order passed by the Commissioner himself. The Commissioner having considered the merits of the rival claims and having decided against the plaintiff gave him liberty to go to a civil Court if he so desired to have his own adoption declared as valid. Therefore the order of the Commissioner

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in its very nature was provisional and the possession of the land was also given to defendant No.2 provisionally so long as a contrary decision was not given by a competent civil Court. Therefore in our opinion this suit does not fall under Article 14 and it was rightly held by the trial Court that it was not barred by limitation.

The second contention which Mr.Thakor wishes to urge is that the lands in suit although sanadi lands, are not Watan lands and Government are entitled to resume the lands. This contention cannot arise in this suit and it is unnecessary for us to decide it. Mr.Thakor wants us to look at the Commissioner's order as if it was an order of resumption of the lands and re-grant of thoselands to defendant No.2. Obviously that is not the order of the Commissioner. The Commissioner does not purport to resume the lands. He orders that the lands be handed over to defendant No.2 merely because in his opinion he is ~~it~~ the rightful heir of Hanmappa. The order for possession is not made on the basis of the lands being resumed and a fresh grant being made to defendant No.2.Under these circumstances it would be entirely academic at this stage to consider whe-ther the Sanadi lands are watan lands and whether the Govern-ment is entitled to resume these lands or not.

The result is the appeal fails and is dismissed with costs.

By order of the Court,

Sd/- S.H.Belavadi

Deputy Registrar.

True Copy

For Deputy Registrar,

The 2nd day of ~~February~~ March 1950.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

Rs.as.ps.

760. Sectioner:- Mr.D.T.Patwardhan 0--8-0 Fs.4.

Examiner:- Mr.A.U.Patel 0--2--0

Reader:- Mr.K.R.Mankar

Paper charges:-- 0--0--3

Total Rs...0-10-3

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Supdt.Decree Dept.
7-2-1950.

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In the High Court of Judicature at Bombay.

Friday the 11th day of November 1949.

Appeal No.165 of 1947 From Original Decree.

The Government of the Province of Bombay.
(Original Defendant No.1).. Appellant.

Versus

1 Bhimappa Hanmappa Lodramannavar of Mannikari.Tal.Gokak.

2. Yallawwa w/o Hanamappa Dodrammannavar of Mannikeri Taluka Gokak.Dist Belgaum.

(Ori.Plaintiff and defendant No.3).....Respondents.

Claim Rs.680/-
5700/- for Advocate's fees.

HIGH COURT APPELLATE SIDE BOMBAY CERTIFIED COPY

The plaintiff sued for a declaration that he was lega--lly adopted son of the deceased Hanmappa Ramappa Dodramm--annavar,for possession of the suit lands described in the plaint,for a declaration of his eligibility to serve as a Sanadi of the village Mannikeri and for costs of the suit.

The Original Suit No.446 of 1946 was decided by the Joint Civil Judge S.D.of Belgaum who granted a declaration as sought for and decreed the suit with costs as detailed in his judgment.

An appeal has been admitted in the High Court from the decision of the lower Court.Notice was ordered to issue by the Hon'ble Mr.Justice Bavdekar on the 3rd day of July,1947.

The grounds of objection to the decision appealed against are:-

1. That the learned trial Judge should have held that the plaintiff could not bring a suit against Government,as he had brought.

2. That the suit was barred under Act 14 of Schedule I of the Indian Limitation Act.

3. That the learned trial Judge should have held that the lands in suit were not Watan property.

Coram:- Chagla C.J.and Gajendragadkar J.

For the reasons stated in the accompanying Judgment, the Court confirms the decree of the lower Court and dismisses the appeal with costs.

11th November 1949.

Sd/- S.H.Belavadi
Deputy Registrar.

Bill of costs in the High Court,

By the appellant:--	Rs.as.ps.
Stamps for memorandum of appeal.	63-12-0
Stamps for copies of decree and Judgment.	1-14-0
Stamps for vakalatnamâ (Government Pleader appears)	0--0-0
Bhatta for process.	9--0-0
Sectioner's Fee.	15-14-0
Advocate's Fee.	204--0-0
Printing charges.	11--0-0
Copying charges for preparing paper books.	9-14-0
Copying fee under Rule 111 of the High Court, Appellate Side Rules,1936.	6--0-0
Total Rs.....321--6-0	

By Respondent No.1:--	Rs.as.ps.
Stamps for Vakalatnama	2--8-0
Advocate's Fee.	204--0-0
Total Rs...206--8-0	

Sd/- S.H.Belavadi
Deputy Registrar,
The 11th day of November 1949.

(SEAL)

True Copy

For Deputy Registrar,
The 2nd day of February 1950

S Bel. 2/2/50